Hubah Sdn Bhd & Ors v Koperasi Pusaka (Penampang) Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO S-02–465–11 OF 2011
RAMLY ALI, AZHAR MAAH AND ABDUL AZIZ JJCA
14 MAY 2012

Civil Procedure — Limitation — Co-operative society — Joint ventures — Termination of — Allegation that transaction void — Whether claim barred by limitation — Whether Limitation Ordinance (Sabah) apply to void transactions — Limitation Ordinance (Sabah Cap 72)

Unincorporated Associations — Societies — Co-operative society — Resolution of board — Respondent authorised to enter into joint ventures to develop its lands — Registrar of co-operatives notified of mandate given — Respondent terminated transactions — Whether transactions between appellants and respondent void for illegality — Whether respondent's board acted without authority of its members in general meeting — Co-operative Societies Act 1993 ss 13 & 36

The appellants, namely Hubah Sdn Bhd ('Hubah') and Konkamaju Sdn Bhd ('Konkamaju'), were appealing against the decision of the High Court involving six suits to enforce several transactions. Although all the six actions were tried in the court below, there are facts that are common to them all. The common facts were that the respondent, which was registered under the Sabah Cooperative Societies Ordinance 1958, owned five lots of land. Vide a resolution at the AGM, the respondent was authorised to take suitable steps to develop all the lands owned by the respondent. The Registrar of Cooperatives Sabah was notified of the mandate given in the resolution to the board of the respondent to deal with the lands in question. At the respondent's general meeting held in April 1992, its members had authorised its board to enter into joint ventures to develop all its lands. This authorisation was repeatedly briefed by the chairman to all members of the respondent at two separate special general meetings of the respondent in February 1993 and March 1993. Accordingly, at a meeting of the respondent's board, the board accepted the appellant's joint venture proposals. However, in August 2008 and February 2009, the respondent terminated the transactions with the appellants who then filed the present suits to declare the termination as void. The trial judge dismissed the appellants' suits and granted the respondent reliefs of declarations in respect of an application under O 14A of the Rules of Court 2012. In his decision, the learned judge made two principal findings, namely that the transactions between the appellants and the respondent in relation to the five pieces of land in question were void for illegality based on the ground

that the respondent's board had acted without authority of its members in the general meeting. Further, the learned judge held that the respondent's claim was not barred by limitation because the Sabah Limitation Ordinance does not apply to void transactions. The appellants were dissatisfied with the above findings and rulings of the learned judge. The appellants alleged that the trial judge had failed to deal with the main questions framed under O 14A and had granted the respondent relief that was never claimed by them.

Held, allowing the appeal with cost of RM100,000:

(1) Based on the documentary evidence as well as the related resolutions of the Koperasi members in general meetings, the transactions with Hubah and Konkamaju were intra vires. The learned judge's finding on this issue was against the weight of the evidence (see para 14).

(2) The appellants as third parties dealing with the Koperasi was not concerned with matters of indoor management of the Koperasi. This was in line with the rule in *Royal British Bank v Turquand* (1856) 119 ER 886 (the Turquand rule). It is an established law that the Turquand rule protects outsiders dealing with the entity (in this case, the Koperasi) in good faith who are entitled to assume that acts within the constitution and powers of the entity had been properly performed and are not bound to inquire whether acts of internal management have been regular. Further, s 13 of the Co-operative Societies Act 1993 makes the Koperasi by-law open for inspection by members only. As such the appellants as third parties would have no means of ascertaining if they had been duly complied with by the Koperasi (see paras 15–16).

(3) The appellants, as third parties, who entered into bona fide commercial agreements with the Koperasi, were entitled to assume that all matters of indoor management that were required to be done were done. The transactions had been entered into for the benefit of the Koperasi. The agreements had been duly discharged by performance and the Koperasi had obtained all its entitlements under the various agreements. All the agreements with the appellants were valid and the Koperasi was bound by them (see para 17).

(4) The determination of the issues as to whether the transactions in question require approval of the members of the Koperasi in the general meeting under the Koperasi by-law 8(3) and s 36 of the Co-operative Societies Act 1993; if the answer is in the affirmative, whether there is sufficient documentary evidence to prove that such approval was obtained in the general meeting of the Koperasi; and finally whether as outsiders and innocent third parties dealing with the Koperasi's board at arm's length, they were not concerned with matters pertaining to the indoor management of the Koperasi. All these issues can be determined under O 14A without having to go for full trial of the matter. The

documents, in the form of the relevant resolutions of the members' general meeting, and the relevant provisions of the law and the by-law were sufficient for such determination (see para 19).

(5) With regards to the issue that the respondent's claim was time barred under the Sabah Limitation Ordinance, this issue was not really relevant in view of the determination of the earlier two issues which were in favour of the appellants. Even assuming the respondent's claim was not time barred under the Sabah Limitation Ordinance, the determination of the two earlier issues in favour of the appellants were sufficient to determine the matter under O 14A and to enter judgment in favour of the appellants on their claims (see para 21).

[Bahasa Malaysia summary

Perayu-perayu, iaitu Hubah Sdn Bhd ('Hubah') dan Konkamaju Sdn Bhd ('Konkamaju'), merayu terhadap keputusan Mahkamah Tinggi bagi enam guaman untuk melaksanakan beberapa transaksi. Walaupun keenam-enam tindakan dibicarakan di mahkamah bawahan, terdapat fakta-fakta yang sama dalam kesemuanya. Fakta-fakta yang sama adalah bahawa responden, yang didaftarkan di bawah Ordinan Koperasi Sabah 1958, memiliki lima bidang tanah. Melalui suatu resolusi ketika AGM, responden diberikan kuasa untuk mengambil langkah-langkah yang sewajarnya untuk membangunkan kesemua tanah-tanah yang dimiliki oleh responden. Pendaftar Koperasi Sabah dimaklumkan mengenai mandat yang diberikan dalam resolusi kepada lembaga responden untuk berurusan dengan tanah-tanah berkenaan. Semasa mesyuarat umum responden yang diadakan pada April 1992, ahli-ahlinya telah memberikan kuasa kepada lembaga untuk memasuki usahasama untuk membangunkan tanah-tanah tersebut. Pemberian kuasa ini telah berulang kali diberikan taklimat oleh pengerusi kepada kesemua ahli-ahli responden pada dua mesyuarat umum khas responden secara berasingan iaitu pada Februari 1993 dan Mac 1993. Dengan wajarnya, ketika mesyuarat lembaga responden, lembaga menerima cadangan-cadangan usahasama perayu. Walau bagaimanapun, pada Ogos 2008 dan Februari 2009, responden menamatkan transaksi-transaksi dengan perayu-perayu yang kemudiannya memfailkan guaman-guaman ini untuk mengisytiharkan bahawa penamatan tersebut tidak sah. Hakim bicara menolak guaman-guaman perayu-perayu dan memberikan responden relief-relief bagi deklarasi berkenaan permohonan di bawah A 14A Kaedah-kaedah Mahkamah 2012. Dalam keputusannya, hakim telah membuat dua dapatan utama, iaitu bahawa transaksi-transaksi antara perayu-perayu dan responden bagi lima bidang tanah berkenaan adalah terbatal kerana tidak sah atas dasar bahawa lembaga responden telah bertindak tanpa kuasa ahli-ahlinya dalam mesyuarat umum. Selanjutnya, hakim memutuskan bahawa tuntutan responden tidak dihalang oleh had masa kerana Ordinan Koperasi Sabah tidak terpakai ke atas transaksi-transaksi yang tidak sah. Perayu-perayu tidak berpuas hati dengan dapatan-dapatan dan

keputusan-keputusan hakim. Perayu-perayu mendakwa bahawa hakim bicara telah gagal untuk menangani persoalan-persoalan utama yang terangka di bawah A 14A dan memberikan responden relief yang tidak pernah mereka tuntut.

Diputuskan, membenarkan rayuan dengan kos sebanyak RM100,000:

(1) Berdasarkan keterangan dokumentar dan juga resolusi-resolusi ahli-ahli Koperasi dalam mesyuarat-mesyuarat am yang berkaitan, transaksi-transaksi dengan Hubah dan Konkamaju adalah intra vires. Dapatan hakim mengenai isu ini adalah bertentangan dengan berat keterangan (lihat perenggan 14).

(2) Perayu-perayu sebagai pihak-pihak ketiga yang berurusan dengan Koperasi tidak hemah akan hal-hal pengurusan dalaman Koperasi. Ini selaras dengan kaedah dalam *Royal British Bank v Turquand* (1856) 119 ER 886 ('kaedah Turquand'). Adalah undang-undang mantap bahawa kaedah Turquand melindungi pihak-pihak luar yang berurusan dengan entiti (dalam kes ini, Koperasi) dengan suci hati yang berhak untuk menganggap bahawa perlakuan-perlakuan dalam perlembagaan dan kuasa-kuasa entiti telah dilaksanakan dengan betul dan tidak terikat untuk mempersoalkan sama ada pengurusan dalaman adalah teratur. Selanjutnya, s 13 Akta Koperasi 1993 menjadikan undang-undang kecil Koperasi terbuka bagi pemeriksaan oleh ahli-ahli sahaja. Dengan itu, perayu-perayu sebagai pihak-pihak ketiga tidak mempunyai cara untuk memastikan bahawa mereka telah dipatuhi oleh Koperasi (lihat perenggan 15–16).

(3) Perayu-perayu, sebagai pihak ketiga, yang telah memasuki perjanjian-perjanjian komersil secara suci hati dengan Koperasi, berhak untuk menganggap bahawa hal-hal pengurusan dalam yang perlu dijalankan, telah dijalankan. Transaksi-transaksi telah dimasuki bagi faedah Koperasi. Perjanjian-perjanjian telah dilepaskan sewajarnya dengan pelaksanaan dan Koperasi telah memperolehi segala haknya di bawah pelbagai perjanjian. Kesemua perjanjian dengan perayu-perayu adalah sah dan Koperasi tidak terikat dengan kesemuanya (lihat perenggan 17).

(4) Pemutusan isu-isu sama ada transaksi-transaksi berkenaan memerlukan kebenaran oleh ahli-ahli Koperasi dalam mesyuarat am di bawah undang-undang kecil Koperasi 8(3) dan s 36 Akta Koperasi 1993; jika jawapannya adalah afirmatif, sama ada terdapat keterangan dokumentar yang mencukupi untuk membuktikan bawah kebenaran sedemikian telah diperolehi dalam mesyuarat am Koperasi; dan akhirnya sama ada sebagai pihak-pihak luar dan pihak-pihak tidak bersalah berurusan dengan lembaga Koperasi secara dekat, mereka tidak hemah akan hal-hal perkara berkaitan pengurusan dalaman Koperasi. Isu-isu ini boleh

diputuskan di bawah A 14A tanpa perlu melalui perbicaraan penuh hal perkara tersebut. Dokumen-dokumen tersebut, dalam bentuk resolusi-resolusi relevan ahli-ahli mesyuarat umum dan peruntukan-peruntukan undang-undang dan undang-undang kecil yang relevan cukup bagi pemutusan sedemikian (lihat perenggan 19).

(5) Berkenaan isu bahawa tuntutan responden telah dihadkan oleh had masa di bawah Ordinan Had Masa Sabah, isu ini tidak relevan melihat pada pemutusan dua isu terawal yang berpihak kepada perayu-perayu. Walaupun menganggap bahawa tuntutan responden tidak dihadkan oleh had masa di bahawa Ordinan Had Masa Sabah, pemutusan berkenaan dua isu terawal yang berpihak kepada perayu-perayu cukup untuk memutuskan hal perkara tersebut di bawah A 14A dan memasukkan penghakiman berpihak kepada perayu-perayu dalam tuntutan-tuntutan mereka (lihat perenggan 21).]

Notes

For cases on co-operative society, see 12 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 3091–3107.

Cases referred to

Dream Property Sdn Bhd v Atlas Housing Sdn Bhd [2008] 2 MLJ 812, CA (refd)
Mahfuz bin Hashim v Koperasi Pekebun Kecil Daerah Segamat & Ors [2005] 3 MLJ 726; [2004] 8 CLJ 402, HC (refd)
Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors [1998] 1 MLJ 465, FC (refd)
Petroleum Nasional Bhd v Kerajaan Negeri Terengganu [2004] 1 MLJ 8, CA (refd)
Royal British Bank v Turquand (1856) 119 ER 886 (folld)

Legislation referred to

Co-operative Societies Act 1993 ss 13, 36
Limitation Ordinance (Sabah Cap 72)
Rules of Court 2012 O 14A
Sabah Co-operative Societies Ordinance 1958

Appeal from: Joint Trial of Originating Summons Nos K24–172 of 2008, K22–140 of 2009, K22–145 of 2009, K22–161 of 2009, K22–163 of 2009 and K22–203–2009–III (High Court, Kota Kinabalu)

Colin Lau (Chung Juin Dau with him) (Chung & Associates) for the appellants.
David Fung Yin Kee (Amli Nohin with him) (Chau & Thien) for the respondent.

Ramly Ali JCA (delivering judgment of the court):

[1] The present appeal concerns the following six civil suits, namely:

(a) Suit 172 of 2008 (Suit 172);

(b) Suit 142 of 2009 (Suit 142);

(c) Suit 163 of 2009 (Suit 163);

(d) Suit 145 of 2009 (Suit 145);

(e) Suit 161 of 2009 (Suit 161); and

(f) Suit 203 of 2009 (Suit 203).

[2] For Suit 172, Suit 163, Suit 161 and Suit 203, the respective plaintiffs, namely Hubah Sdn Bhd ('Hubah') and Konkamaju Sdn Bhd ('Konkamaju') were to enforce several transactions that had been entered into between each of them and Koperasi Pusaka (Penampang) Bhd ('Koperasi'). The Koperasi on the other hand through Suit 140, Suit 145 and Suit 161 were to have those very transactions declared null and void.

[3] The learned High Court judge found for the Koperasi and granted the relief sought. His Lordship also held that the several suits by the Koperasi were not barred by limitation. Although all the six actions were tried in the court below, there are facts that are common to them all.

COMMON FACTS

[4] The Koperasi, which was registered on 20 March 1972 under the Sabah Cooperative Societies Ordinance 1958 owned five lots of land held under CL 215326766, CL 215326784, CL 215326800, CL 215326793 and CL 215326775. On 21 April 1984 it held its AGM. The resolution of the said AGM authorised the Koperasi's board to take suitable steps to develop all the lands owned by the Koperasi. On 16 July 1985, the Registrar of Cooperatives Sabah was notified of the mandate given in the resolution to the board of the Koperasi to deal with the lands in question. The said mandate was confirmed and reinforced by the Koperasi vide it's another AGM resolution dated 18 December 1988.

[5] At the Koperasi's general meeting held on 5 April 1992 it members had authorised its board to enter into joint ventures to develop all its lands. This authorisation was repeatedly briefed by the chairman to all members of the Koperasi at two separate special general meetings of the Koperasi held on 28 February 1993 and 7 March 1993.

[6] On 24 August 2002 at a meeting of the Koperasi's board, the board accepted Hubah's joint venture proposal in respect of land held under CL 215310688 subject to Hubah agreeing to give RM1.8m worth of condominiums to be developed at Riverside Plaza, Kingfisher Park in exchange together with rental compensation.

[7] Acting pursuant to the authority vested in it by the various resolutions referred to earlier, the Koperasi did the followings:

(a) on 18 January 1999, it granted a power of attorney to Hubah in respect of land CL 215404247 which empowered Hubah to do several acts including to sublease the land in question;

(b) on 23 February 1999, it entered into two agreements with Hubah for the sale or exchange of one acre of land held under CL 215404247 with one unit of double storey light industrial building with Hubah; and to sell to Hubah the land held CL 215404247 in exchange for one unit of shop house (Lot 53) in Bandar Baru Penampang; and this transaction was fully executed when Hubah handed vacant possession of the said Lot 53 to the Koperasi;

(c) on 28 March 2000 the Koperasi transferred CL 215404247 to Hubah; and the memorandum of transfer was duly executed for the Koperasi by its chairman, secretary and treasurer and it was duly registered in Hubah's favour on 5 October 2000;

(d) on 20 September 2002, the Koperasi and Hubah entered into a sale and purchase agreement for the sale of the land CL 215310688 for a sum of RM1.8m in exchange for units of condominiums to be built at the Riverside Plaza, Kingfisher Park whereby Hubah agreed to compensate the Koperasi with a monthly rental of RM4,000 until the condominiums were transferred to it. The Koperasi agreed to remove the squatters occupying the land; on the same date the Koperasi granted a power of attorney to Hubah authorising Hubah to deal with the land CL 215310688;

(e) from July 2003–July 2007, the Koperasi had received from Hubah the agreed monthly rental compensation payments without any protest; in all the Koperasi was paid RM184,000 by Hubah. However after the Koperasi's board was reconstituted in 2007, it refused to accept any payment from Hubah;

(f) in respect of Konkamaju transaction the Koperasi at its special general meeting on 22 May 1994 had unanimously accepted the proposed joint venture with Aggasf in respect of the lands held under CL 215326800 and CL 215326775. The said transaction was approved by the registrar of cooperative societies vide its letter dated 16 November 1994. An agreement to that effect and a power of attorney were executed on 3 December 1994 signed by eight directors of the Koperasi on behalf of the Koperasi;

(g) the Koperasi consented to Aggasf assigning its rights and liabilities under the joint venture agreement to Konkamaju; and the assignment is dated 22 November 2000;

(h) the Koperasi entered into a sale and purchase agreement on 9 July 2001 with Konkamaju for the transfer of four units of commercial buildings in Kingfisher Park to the Koperasi in exchange for the Koperasi transferring the lands CL 215326800, and CL 215326775 to Konkamaju;

(i) the Koperasi took delivery of the four Kingfisher units from Konkamaju on 1 March 2004 and as agreed, leased it back to Konkamaju at the rentals of RM3,000 per month per unit for eight years. The Koperasi had enjoyed the payments from 1 July 2004 until 2007; and

(j) on 2 May 1992, the Koperasi entered into another joint venture to develop three parcels of lands including the land held under CL 215326784 known as Bandar Baru Penampang. The first phase of said project completed on 25 September 1998 and occupational certificate was issued for the commercial buildings; and the Koperasi had received all its entitlement from the first phase of the development. On 8 September 2004, Konkamaju's architect, submitted the development plan for the reminder of the project to Majlis Daerah Penampang, but to-date no approval has been obtained.

[8] On 26 August 2008 and 5 February 2009 the Koperasi wrote letters to terminate the transactions with Hubah. Hubah refused to accept the termination and filed suits to have the termination declared void. The same notices of termination were also issued by the Koperasi to Konkamaju to terminate their respective transactions. Konkamaju then filed its action to challenge the termination.

[9] The learned High Court judge dismissed the appellants' suits and granted the respondent ('the Koperasi') reliefs of declarations in respect of an application under O 14A of the Rules of Court 2012 (previously known as the Rules of the High Court 1980) and his final judgment and consequential orders given on 21 January 2011. In coming to his decision, the learned judge made two principal findings, namely that the transactions between the appellants and the respondent in relation to the five pieces of land in question were void for illegality based on the ground that the Koperasi's board had acted without authority of its members in general meeting. The learned judge had also made a finding that the Koperasi's claim is not barred by limitation because the Sabah Limitation Ordinance does not apply to void transactions.

[10] The appellants were dissatisfied with the above findings and rulings of the learned judge. The appellants further complained that the learned judge had failed to deal with the main questions framed under O 14A; and he had also granted the Koperasi relief never claimed by them. Hence the present appeal before us.

[11] The appellants' case rest on the following grounds, inter alia, namely:

(a) that the finding that there was no approval by the Koperasi in general meeting is contrary to the unchallenged documentary evidence before the court; and

(b) that as outsiders and innocent third parties dealing with the Koperasi's board at arm's length, they were not concerned with matters pertaining to the indoor management of the Koperasi.

[12] The respondent contended (and agreed by the learned judge) that s 36 of the Co-operative Societies Act 1993 and the Koperasi's by-law 8(3) require mandate of the general meeting of members of the Koperasi to be obtained for the said agreements entered into by the Koperasi in respect of all the transactions in question.

[13] Agreed documents were placed before the court for its determination to reflect the true position of the matter. There is evidence to show that approval of the general meeting of the Koperasi was given on 21 April 1984 in broad and general terms and in specific terms on 5 April 1992. In any event, by-law 8(3) which came into force on 3 November 1998 does not require the terms of any agreement to be approved by the Koperasi in general meeting. All that by-law 8(3) requires is for the board to prepare suitable schedule of activities for approval by the members at general meeting. Further s 36 of the Co-operative Act 1993 merely declares that subject to the Act and the by-law, the ultimate authority of a cooperative society shall vest in the general meeting of its

members. In the present case, the ultimate authority of the Koperasi did in fact authorise its board to develop all the lands of the Koperasi and to enter into joint ventures for that purpose.

[14] We are of the view that based on the documentary evidence as well as the related resolutions of the Koperasi members in general meetings, the transactions with Hubah and Konkamaju were intra vires. The learned judge's findings on this issue is against the weight of the evidence.

[15] We are also of the view that the appellants as third parties dealing with the Koperasi was not concerned with matters of indoor management of the Koperasi. This is in line with the rule in *Royal British Bank v Turquand* (1856) 119 ER 886 ('the Turquand rule'). It is an established law that the Turquand rule protects outsiders dealing with the entity (in this case is the Koperasi) in good faith who are entitled to assume that acts within the constitution and powers of the entity have been properly performed and are not bound to inquire whether acts of internal management have been regular (see Federal Court decision in *Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors* [1998] 1 MLJ 465).

[16] The Turquand rule applies to cooperative societies as demonstrated by the judgment of Jeffrey Tan J (now FCJ) in *Mahfuz bin Hashim v Koperasi Pekebun Kecil Daerah Segamat* [2005] 3 MLJ 726; [2004] 8 CLJ 402. It is also pertinent to note that s 13 of the Co-operative Societies Act 1993 makes the by-law open for inspection by members only. As such the appellants as third parties would have no means of ascertaining if they had been duly complied with by the Koperasi.

[17] The appellants as third parties entering into bona fide commercial agreements with the Koperasi were entitled to assume that all matters of indoor management that were required to be done were done. The transactions had been entered into for the benefit of the Koperasi. The agreements had been duly discharged by performance and the Koperasi had obtained all its entitlements under the various agreements. We are of the view that all those agreements are valid and that the Koperasi was bound by them.

[18] The present case before the High Court had proceeded for summary determination under O 14A of the Rules of Court 2012 (previously the Rules of the High Court 1980). In a nutshell O 14A enables the court to determine any question of law or construction of documents where it appears that such question is suitable for determination without having to go for full trial of the matter and such determination will finally determine the entire cause or matter or any claim therein. Rule (2) of the Order enables the court to summarily enter judgment which would finally dispose of the matter. The determination

A can be done based on undisputed facts or facts which should not have been disputed after considering all the relevant evidence, oral as well as documentary (see *Dream Property Sdn Bhd v Atlas Housing Sdn Bhd* [2008] 2 MLJ 812 — Court of Appeal; and *Petroleum Nasional Bhd v Kerajaan Negeri Terengganu* [2004] 1 MLJ 8 — Court of Appeal).

B

[19] In the present case the determination of the issues as to whether the transactions in question require approval of the members of the Koperasi in general meeting under the Koperasi by-law 8(3) and s 36 of the Co-operative Act 1993; and if the answer is in the affirmative, whether there are sufficient C documentary evidence to prove that such approval was obtained in the general meeting of the Koperasi; and finally whether as outsiders and innocent third parties dealing with the Koperasi's board at arm's length, they were not concerned with matters pertaining to the indoor management of the Koperasi. All these issues can be determined under O 14A without having to go for full D trial of the matter. The documents, in the form of the relevant resolutions of the members general meeting, and the relevant provisions of the law and the by-law are sufficient for such determination.

E **[20]** Based on the above considerations we are of the view that the determination of the issues posed should be in favour of the appellants; and judgment can be entered in favour of the appellants based on their respective claims against the respondent (the Koperasi).

F **[21]** The appellants also raised the issue that the respondent's claim was time barred under the Sabah Limitation Ordinance on the ground that the claim was instituted beyond the period of six years after the execution of the agreements which the respondent claimed to be void and invalid. Our view is that, this issue is not really relevant in view of the determination of the earlier G two issues which are in favour of the appellants. Even assuming the respondent's claim is not time barred under the Sabah Limitation Ordinance, the determination of the two earlier issues in favour of the appellants are sufficient to determine the matter under O 14A and to enter judgment in favour of the appellants on their claims.

H

CONCLUSION

[22] We therefore allow the appeal with costs of RM100,000 to the

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appellants (here and below). We set aside the order and decision of the learned judge and we allow the appellants' claims. We also make an order that the deposit be refunded to the appellants.

Appeal allowed with cost of RM100,000.

Reported by Ashgar Ali Ali Mohamed